

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Parker

Serial No.: 10/735,099

Filed: December 12, 2003

Confirmation No.: 1596

Group Art Unit: 2614

Examiner: Al Aubaidi, Rasha S.

Docket No.: 190250-1710

For: **Workforce Planning System Incorporating Historic Call-Center Related Data**

REMARKS IN SUPPORT OF
PRE-APPEAL BRIEF CONFERENCE

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Applicant submits the following remarks in support of a Request for a Pre-Appeal Brief Conference.

REMARKS

Applicant submits that the following clear legal deficiency exists in the rejection. Namely, the previous Office Action equates the alleged inherency of a communication switch with obtaining call-history statistics from the communication switch, which are two functions that are technically very different from each other. Furthermore, the instant claims recite, among other elements, "logic configured to obtain from a communications switch, a first call-history statistic of a first period of time." Even if the cited reference, *Leamon*, discloses a call center with an allegedly inherent communication switch, as pointed out on page 2 of the Advisory Action mailed February 22, 2008, *Leamon* fails to disclose "logic configured to obtain from a communications switch, a first call-history statistic of a first period of time." Therefore, *Leamon* fails to anticipate the claims.

I. Status

Claims 1-36 are rejected under 35 U.S.C. 102(e) as allegedly being anticipated by *Leamon* (U.S. Patent No. 6,970,829).

II. Rejections of Independent Claims 1, 13, and 25 Under 35 U.S.C. §102

Independent claims 1, 13, and 25 are rejected under 35 U.S.C. 102(e) as allegedly being anticipated by *Leamon* (U.S. Patent No. 6,970,829). Applicant respectfully submits that independent claim 1 is allowable for at least the reason that *Leamon* does not disclose, teach, or suggest at least **logic configured to obtain from a communications switch, a first call-history statistic of a first period of time**. The

Final Office Action alleges that obtaining call-history statistics from a communication switch is inherent to the disclosure of *Leamon*. However, Applicant respectfully disagrees. The Office Action argues that *Leamon* inherently discloses a communication switch. See Office Action of October 1, 2007, page 2. However, Applicant respectfully submits that it is not inherent that the statistics are obtained from the switch.

"Anticipation by inherency requires that 1) the missing descriptive matter be 'necessarily present' in the prior art reference ..." *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264 (Fed. Cir. 1991). In other words, for something to be inherent to a disclosure, it must be the only way that something can be done – it must be necessarily present.

Applicant respectfully submits that instead of obtaining the statistics from the communication switch, the call history statistics could be captured by call-center personnel and entered into a database from which the call-history statistics could be obtained.

The Advisory Action also states that to refute the Examiner's allegation of inherency, the "Applicant must refer to certain [sic] section in the *Leamon* reference that teaches or at least suggest [sic] this limitation." See *Advisory Action*, page 3. Applicant respectfully submits that this requirement by the Examiner does not follow the law in regard to inherency. For something to be inherent in a disclosure, as provided above, it must necessarily be present. Therefore, if the Applicant can show the possibility that the statistics can be collected in a manner other than from the communication switch, the alleged inherency is disproved. Applicant has offered an alternative method of collecting call history statistics (data is collected by call-center personnel and entered into a database from which the call-center statistics, such as work times and wait times,

could be obtained) using the system disclosed in *Leamon*. Therefore, obtaining the call history statistics from the communications switch is not necessary, and not inherent to the disclosure of *Leamon*. Therefore, *Leamon* does not anticipate independent claim 1, and the rejection should be withdrawn for at least that reason.

Independent claims 13 and 25 are allowable for similar reasons. Dependent claims 2-12, 14-24, and 26-36 are allowable for at least the reason that dependent claims 2-12, 14-24, and 26-36 contain all the features of independent claims 1, 25, and 36.

CONCLUSION

For at least the reasons set forth above, favorable reconsideration and allowance, or the re-opening of prosecution on the merits of the present application and all pending claims are hereby courteously requested.

Respectfully submitted,

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& RISLEY, L.L.P.**

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